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OCT 7 1964
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No. 366

In the Supreme Court of the United States

OCTOBER TERM, 1963

THE NOOKSACK TRIBE OF INDIANS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 666

THE NOOKSACK TRIBE OF INDIANS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinions of the Indian Claims Commission are reported at 3 Ind. Cl. Comm. 479, 492; 6 Ind. Cl. Comm. 578; 6 Ind. Cl. Comm. 681; and 10 Ind. Cl. Comm. 219. The opinion of the Court of Claims is not reported.

JURISDICTION

The judgment of the Court of Claims was entered on July 12, 1963. An order was entered on October 7, 1963, extending the time to file a petition for writ of certiorari to December 9, 1963. The petition for

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a writ of certiorari was filed on December 9, 1963. The jurisdiction of this Court is invoked under 28 U.S.C. 1255(1) and Section 20(c) of the Indian Claims Commission Act of 1946, 60 Stat. 1054, 25 U.S.C. 70s(c).

QUESTION PRESENTED

Whether the findings of the Indian Claims Commission as to the acreage occupied by petitioner and the value of that acreage as of March 8, 1859, are supported by substantial evidence.

STATEMENT

In proceedings under the Indian Claims Commission Act petitioner, the Nooksack Tribe, claimed that it exclusively used and occupied 498,080 acres in the northwest corner of the State of Washington until 1890, when United States citizens first came into the area as homesteaders. It contended that it was entitled to compensation for the fair value of these lands taken by the United States as of 1890.

All of the lands claimed by petitioner were included in the lands ceded to the United States under the so-called Point Elliott Treaty of 1855, 12 Stat. 927, which was ratified on March 8, 1859. Petitioner was not a party to that treaty and asserted that its right to the lands remained unimpaired until the arrival of the homesteaders. The Indian Claims Commission disagreed and, as with all of the neighboring tribes, held that the date of the ratification of the treaty established the time of taking. The Court of Claims affirmed.

The Indian Claims Commission also held that the Nooksack Tribe exclusively used and occupied only 80,590 acres of the 498,080 acres claimed. For the taking of these lands the Commission held that the tribe was entitled to compensation at the rate of 65 cents per acre, the fair value as of March 8, 1859. The Court of Claims held that the findings of the Commission as to the lands owned and the value of those lands were supported by substantial evidence as required by Section 20(b) of the Indian Claims Commission Act (25 U.S.C. 70s(b)).

ARGUMENT

As in the Court of Claims, petitioner attacks the findings of the Indian Claims Commission as to amount of land owned and the value of that land on the ground that they are not supported by substantial evidence. The short answer is that the sufficiency of the evidence raises no issue for review by this Court. The Indian Claims Commission Act gives the Court of Claims exclusive jurisdiction to affirm, modify, or set aside the final determinations of the Commission and to determine whether its findings of fact are supported by substantial evidence. Only determinations of questions of law are subject to review by this Court (25 U.S.C. 70s(b), (c)). No determination of law is involved here.

On the merits, petitioner does not point to any specific findings which are not supported by substantial evidence but bases its objections on the fact that the Commission has found larger areas to have been owned by neighboring tribes and has assigned higher

per-acre value to such lands. Thus, petitioner states that the Commission awarded the Nooksack Tribe $116 per capita computed on its population in the year 1859 while it awarded a neighboring tribe, the Chehalis, $2,500 per capita in a case decided subsequent to this one. It points out that the Chehalis claimed and were allowed 800,000 acres of land as being occupied by 300 Indians whereas the Commission allowed in this case only 80,590 acres for 450 Indians. It argues that the living habits of the Nooksack Tribe were the same in 1859 as those of the Chehalis and that there is nothing in the record of either case to indicate that one tribe occupied any more or less land than the other (Pet. 1-2). Petitioner asserts that the disparity of the awards should have led the Court of Claims to reverse the ruling of the Commission on the ground that the evidentiary findings do not support an ultimate finding that one tribe occupied 20 times more land per capita than the other.

These contentions were answered by the Court of Claims which made a full review of the record and concluded "that the Commission's findings on both acreage owned and the value as of March 8, 1859, are supported by substantial evidence in the record as a whole." It observed that "Without accepting this standard of comparison as determinative, * * * most of these other awards cited by the [petitioner] are in the same general range of proportionate area as the Nooksack award." If any further explanation of the finding as to acreage owned is desired, it may be found in the Commission's finding that "the economy of this

small tribe was centered around the Nooksack River Valley, where there was an abundance of fish, game, root crops and berries. This made it possible for them to obtain most of their subsistence from the areas in the vicinity of their three main villages" (Slip Op. Ct. Cl., p. 3).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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JANUARY 1964.

U.S. GOVERNMENT PRINTING OFFICE 1964